CP-43 Commission Position on Property Inspection Resolutions

The Commission has received inquiries and complaints claiming that real estate brokers ("Brokers") misrepresent property conditions and negotiate repairs in a manner that conceals issues from the buyer's lender, particularly when the property's condition would affect a lending decision. The Commission issues this position statement to clarify how Brokers can advise buyers regarding inspection objection issues and maintain compliance with Commission rules and regulations. Brokers must understand that in working with their clients to resolve inspection issues, Colorado law imposes upon Brokers the duty to avoid misrepresentations [C.R.S.§ 12-61-113(1)(a)] and dual contracts [C.R.S.§ 18-5-208].

Other than terminating the contract based on inspection, there are generally five alternatives available to address property condition issues in a sales transaction: 1) the seller can repair the property prior to closing; 2) the seller can agree to pay a concession or contribution, for example, a portion of the buyer's closing costs; 3) after closing, the buyer can make the repair without assistance from the seller; 4) the buyer and the seller can negotiate a modification to the sales price; or 5) at closing, the seller can escrow funds or pay a contractor (if allowed by the lender).

If the buyer is obtaining a loan to fund the purchase of the property, any of these options can affect the mortgage financing. Prior to negotiating any of these alternatives, the broker should advise the buyer to ask their mortgage loan originator or lender whether the resolution may (1) have a detrimental impact on the Buyer's ability to get the loan; (2) cause delays in the lender's processing and funding of the loan by Closing; and (3) require further inspections and repairs.

Once items to negotiate have been identified, the buyer broker should use the Commission-approved Inspection Objection form to identify the inspection issues that the buyer seeks to have resolved (Note: the Inspection Objection form is a notice form and is not part of the contract). Then, once the buyer and seller have reached a resolution, the Brokers can memorialize the terms on the Commission-approved Inspection Resolution form or the Agreement to Amend/Extend the Contract.